

March 1, 2022

**Comments: America the Beautiful – Docket Number: DOI-2021-0016**

These comments are submitted on behalf of Public Employees for Environmental Responsibility (PEER) in response for a call for public input in developing an “Atlas” to track a clear baseline of information on lands and waters that are conserved or restored for purposes of the administration’s America the Beautiful initiative to have at least 30 % of our lands and waters protected by 2030 (also known as “30x30”).

These comments are limited to inventorying conserved waters for these purposes. PEER will submit separate comments on assessing conserved lands.

The below comments reflect PEER’s suggestions on the attributes of what should be considered conserved waters, as well as data sources, stewardship actions, and ecological outcomes such an Atlas should encompass.

**Overview on Current Conserved Waters Inventory,**

The Marine Protected Area (MPA) Center of the National Oceanic & Atmospheric Administration (NOAA) has developed a database known as the MPA Inventory. This inventory includes U.S. marine protected areas that meet the International Conservation Union (IUCN) definition of protected areas.<sup>i</sup> The MPA Center shares this database annually with the U.S. Geological Survey (USGS) for integration into the Protected Areas Database (PAD-US) that includes both marine and terrestrial areas.

According to that data, approximately 23 percent of U.S. marine waters are considered strongly protected or conserved and an additional approximately 3% is considered conserved.

**Comments**

**I. Current Marine Conservation Inventory Is Inflated**

**A. Includes Land Areas**

In Executive Order 13158, President Clinton created the national MPA system structure and defined MPAs as –

“Any area of the marine environment that has been reserved by Federal, State, territorial, tribal or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.”

The current definition used by NOAA in displaying the “Marine Protected Area Coverage for the United States” changes “area of the marine environment” to “a clearly defined geographical space...”, notably omitting the word “marine”. As a result, the MPA map features the entire Yukon Delta National Wildlife Refuge (and even highlights it on the “Largest U.S. MPAs list”) and the Arctic National Wildlife Refuge, including, apparently the Coastal Plain.

It is also not clear whether these areas are double-counted in calculating the protected lands component of 30x30.

NOAA claims that it only includes the marine area when calculating MPA statistics, yet those calculations are confusing and difficult to differentiate.

### **B. Includes Non-Conservation Sanctuaries**

Shipwreck sanctuaries in the Great Lakes and Potomac River are included in the 26% of “conserved” marine waters although they are not intended for biodiversity conservation. To the extent that the waters are protected only to safeguard historic artifacts rather than natural resources their inclusion in the MPA is problematic.

### **C. Includes Areas with Limited Protections**

The 23% of U.S. waters in strongly protected status is mainly composed of Papahānaumokuākea Marine National Monument (MNM), Pacific Remote MNM and the California marine reserve system. The remaining 3% (from 23-26%) accounts for areas where commercial fishing is managed or regulated but not prohibited, this includes all the remaining sanctuaries, federal parks and refuges, state MPAs, etc.

Since fishing in these areas is still permitted, the threshold of biodiversity and resource conservation required becomes opaque. Moreover, for purposes of calculating the 30% goal for protected waters, it is anomalous to count waters where commercial fishing is banned on a par with waters where commercial fishing is permitted.

## **II. Vast Majority of U.S. Protected Waters in Remote Pacific**

Fully 87% of the entire MPA system consists solely of the Papahānaumokuākea MNM and Pacific Remote MNM. Another 2% of the MPA system is located in the Marianas Trench MNM, the National Marine Sanctuary of American Samoa, and Rose Atoll MNM.

In contrast to these Marine National Monuments in stretches of the central and western Pacific –

- Only 1% of continental state waters, and 0.01% of continental federal waters are strongly protected; and
- While more than half of Alaska’s lands enjoy permanent federal protection, none of Alaska’s federal offshore waters receive comparable protective status, despite comprising half of the nation’s entire shoreline and three-fourths of its total continental shelf.

Thus, the vast majority – nearly 90% – of all U.S. protected waters are located where the vast majority of Americans will never see them. This is a somewhat paradoxical feature, suggesting that the plan for waters may be more aptly titled “America the Remotely Beautiful.”

It would be a far more meaningful conservation achievement to have the 30% goal be applied regionally, rather than nationally. That is, the goal must be to achieve “at least” 30% protected and conserved in each of the NOAA regions.

### **III. Substantial Portion of U.S. Coastal Waters, Bays, and Estuaries Are Impaired**

When discussing America's waters, the America the Beautiful plan does not mention that most American bays, estuaries, and coastal waters are seriously polluted, and getting worse. The U.S. Environmental Protection Agency National Summary of Water Quality Assessments (using data through 2017)<sup>ii</sup> estimates that –

- Nearly four-fifths (79.5%) of all assessed U.S. bays and estuaries are impaired, meaning that they do not meet minimum federal water quality standards, an area covering more 44,000 square m;
- More than two-thirds (71.9%) of assessed coastal shoreline waters, spanning more than 3,329 miles are impaired; and
- The overwhelming majority of assessed ocean and near coastal waters (97.6%) are impaired.

The assessments for the Great lakes are even bleaker with 97.6% of shoreline waters and nearly 100% of Great Lakes open waters failing minimum federal water quality standards.

True conditions may be much worse, as the EPA figures are based on “assessed” waters. The majority of coastal, near coastal, and open waters have not been assessed. These EPA figures also do not account for new, emerging chemicals, many of which are damaging to aquatic life but for which there are no pollution standards.

These figures are drawn from state reports submitted to EPA. Yet, EPA exerts little quality control over these reports, and reporting states often skew assessment methodologies to mask problems. Thus, states have little incentive to monitor water quality and, in many cases, have no dedicated budget for the task.

The rationale for classifying Great Lakes waters as conserved because they are within a sanctuary is undercut if those waters cannot support the full range of potential biodiversity due to pollution. For this reason, America the Beautiful would be doing a disservice if it ignored water quality concerns and focused solely on the regulatory status of U.S. waters.

### **IV. Current Inventory Does Not Specify the Strength or Durability of Protection**

The MPA also includes waters subject to “Other Effective Area-based Conservation Measures” (OECMs). This inclusion appears to dilute this whole 30x30 effort and its value.

It should be evident that the issue of permanency/durability of existing NOAA fishery/habitat closures, etc., is central to the administration's identification of what OECMs in federal waters are considered "conserved," and thus counted in the 30x30 goal of the America the Beautiful initiative.

Notably, the State of California has unveiled its own 30x30 initiative that defines a “conserved” area in the following fashion:

“For the purposes of California’s 30x30 goal, an area is considered “conserved” if it meets the following definition: DEFINITION -- Land and coastal water areas that are durably protected and managed to support functional ecosystems, both intact and restored, and the species that rely on them.”

It further defines “Durably protected or managed areas” as:

“Areas under perpetual conservation easements for species and habitats › Administrative conservation designations that have gone through a formal rulemaking or other enforceable decision-making process not subject to simple reversal.” (Emphasis added).<sup>iii</sup>

By contrast, the federal 30x30 plan does not make such a clear distinction. For example, the Steller Sea Lion buffers in Alaska counted within the NOAA MPAs are actually administrative, and not permanent protected areas. They can be, and have been, changed by NOAA.

Similarly, the Bristol Bay (North Aleutian Basin) Outer Continental Shelf (OCS) withdrawal is administrative in character and could be reversed by a future administration. Nor does NOAA display a compilation of all fishery/habitat closures previously established in federal waters that have subsequently been altered, diminished, or eliminated, as well the processes by which any of these closures can be altered or rescinded.

At the same time, the Obama/Biden Northern Bering Sea Climate Resilience Area is not counted within the MPAs but it is unclear what enduring level of protection those waters enjoy.

In short, the MPA Inventory does a poor job of distinguishing administrative/regulatory closures from permanently protected zones. Yet an unavoidable question is: “Just how durable are these existing fishery/habitat closures in a future administration that may be hostile to conservation?”

## **V. Current Inventory Does Not Assess Nature or Imminence of Threats**

Marine waters are not a homogenous entity. Each marine region is unique with respects to its resources and productivity. However, one element they share in common is that America’s ocean ecosystems are in significant decline due to overexploitation, climate change, acidification, and pollution. Many marine species are threatened or endangered, and entire marine ecosystems, ranging from Arctic sea ice to coral reefs are severely threatened. All of our ocean ecosystems will have difficulty retaining functional integrity throughout this century’s climate crisis

Yet, the MPAs do not reflect the nature of threats facing “conserved” entities. Thus, Arctic waters with fishing restrictions may be experiencing dramatic loss of sea ice that is unsettling its entire food chain. Arctic waters also are facing greater levels of ship traffic and the risk of spills.

Nor do MPAs and OECMs now in place address long-term aspects and conservation outcomes of marine areas. In other words, if the nature of legal/administrative threat does not match the threat faced by a marine area, it is hard to consider it “conserved.”

Public statements by administration officials suggests that the America the Beautiful framework will rely largely, if not exclusively, on “voluntary local efforts” to reach its 30% goal. It is not clear, however, the extent “voluntary local efforts” entail additional protections for marine waters. If they do not identify additional protections, their inclusion within the 30% Atlas seems questionable.

## **VI. No Apparent Plan to Broaden Protection or Bridge 200,000+ Square Mile Shortfall**

The America the beautiful initiative sets a goal of conserving at least 30% of all waters, not by region, but total. NOAA calculates the total of U.S. marine waters as 4.80 million square miles. The current MPA inventory covers 1.24 million square miles, or roughly 26% of the total.

Assuming these figures are correct, that would leave the America the Beautiful initiative short of its goal by approximately 200,000 square miles, or an area equivalent to the land area of France. Yet, the initiative has yet to address how to either expand marine protections or strengthen them.

In addition, two notable words in the Executive Order are that “at least” 30% of waters and lands to be conserved. Further, in order to provide adequate resilience for climate change over the remainder of this century, the administration should target a higher amount of marine waters in protected status, including strongly protected Marine National Monuments.

## **VII. Recommended Steps**

PEER respectfully submits these six recommendations for assembling a conservation atlas of America’s waters:

- 1. True Up the Inventory.** In its contributions to the Atlas, NOAA should at least drop terrestrial areas from their current MPA map, as well as all regulatory fishery closures (e.g., Steller Sea Lion buffers in Alaska) off their current MPA Inventory entirely.
- 2. Disclose the Durability of Protections.** The Atlas should clearly and accurately present the temporal aspect of any MPA or OECM, in which its durability in future federal administrations is highlighted, as well as the nature of any purely regulatory or administrative restrictions.
- 3. Add Threat Analysis.** Each “conserved” marine area should include a categorization of the threat level; *e.g.*, level of fishery removals, vulnerability to OCS leasing, shipping risks, threat of seabed mining, risk from climate change, etc. This analysis would also include a report on that marine ecosystem’s uniqueness, ecological importance, and productivity. To the extent the threat levels would be depicted along a continuum, the Western and Central Pacific regions would rank very low, while an area like the Aleutians, with little legal protections and severely threatened, would rank very high, perhaps the highest in the nation.
- 4. Report Conservation Outcomes.** The Atlas should also report conservation outcomes of each MPA or OECM. For example, currently in the Western Pacific there is relatively little direct threat, and thus little conservation outcome of the Marine Monuments.

By contrast, the Arctic seas have high conservation outcomes as a result of protections. For example, the Northern Bering Sea Climate Resilience Area is an area that had already been closed to bottom trawling by the Northern Pacific Fisheries Management Council (NPFMC), and there was little interest by industry in oil & gas exploration in the Norton Basin. Maintaining a high level of fisheries productivity would be a direct outcome of current and perhaps future restrictions.

These outcome analyses would also give the public a good idea of the authenticity and value of the 30x30 effort.

**5. Chart Possible Conservation Expansion.** Even by the optimistic measures employed by the MPA inventory, the U.S. has much work to do in order to accomplish conservation of at least 30% of all U.S. waters by 2030. Moreover, this 30% goal is based upon a political calculation in a campaign promise, not an ecological imperative. To make this 30x30 effort more meaningful, the administration must include an assessment of the state of all U.S. waters with discussions of how more waters can be conserved.

Much like the Endangered Species Act uses the category of candidate species to help decide whether stronger legal measures are needed, so too should NOAA look at candidate waters where improvements in ecological quality can be practically achieved in a relatively short period through possible conservation steps. In other words, strongly protecting 30% of American waters is far more meaningful when viewed with the remaining 70% of U.S. waters in perspective.

**6. Apply 30% Goal Regionally, Rather Than Nationally.** To be more scientifically sound, we urge the administration to apply the 30% goal equally in all NOAA regions – Alaska, New England Mid-Atlantic, Pacific Islands, Southeast, West Coast, so that waters in each region will receive comparable protective status.

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<sup>i</sup> [202104-us-mpa-coverage.pdf](#)

<sup>ii</sup> [National Summary of State Information | Water Quality Assessment and TMDL Information | US EPA](#)

<sup>iii</sup> [Pathways to 30 by 30 December 2021 Draft \(s3.us-east-1.amazonaws.com\)](#)